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Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

***Re: Petition for Rule Wavier of MDS Operations, Inc., WT Docket No. 07-255***

Dear Ms. Dortch:

The Commission should reject the efforts of MVDDS licensee MDS Operations Inc. ("MDSO") to undermine the balance crafted between DBS satellite providers and terrestrial MVDDS providers forced to share the same spectrum. The stakes at issue in this proceeding are substantial: the risk of significant additional interference to over thirty million satellite TV households from a new service from MDSO.<sup>1</sup> The Commission should deny MDSO's petition because the limited data supporting the proposed rule change cannot support the requested nationwide relief of increased MVDDS power levels. Further, service to satellite TV households should not be placed in jeopardy by MDSO's last-ditch efforts to reduce their own build-out expenditures or divert resources to international opportunities. If MDSO requires more time to build out its facilities consistent with FCC rules, it should request an extension of its build-out milestone, not a fundamental change in the operating parameters of the MVDDS service.

***Introduction of New Services Should Not Harm Existing DBS Satellite Services.***

The DBS industry is a regulatory and commercial success story, creating nationwide competition to incumbent cable providers offering true video consumer choice for the first time. The two DBS providers are now the second- and third-largest pay TV providers in the nation. This has been possible due to a regulatory environment that fostered and developed a high-power satellite service with affordable small receiver dishes. Given the flexibility to grow and develop, the DBS industry has developed higher power and more sophisticated satellites with spot beam capabilities to serve local markets and offer HD content. The ability of the DBS industry to continue to improve and adapt are increasingly cast in doubt because of the escalating demands of other technologies and providers granted access to the DBS spectrum.

Specifically, the existing MVDDS rules permit terrestrial providers to operate in DBS spectrum and cause interference to DBS providers. Non-geostationary satellite providers are authorized to do the same. Spectrum Five and others seek to constrain DBS operations further in the twener proceeding by placing new satellites in between existing DBS satellites.<sup>2</sup> Now, MDSO

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<sup>1</sup> Petition for Rule Wavier of MDS Operations, Inc., WT Docket No. 07-255 (Aug. 29, 2007).

<sup>2</sup> See e.g., Comments of Spectrum Five, IB Docket No. 06-160 (Dec. 12, 2006).

seeks to increase its power 400 times higher than provided for by the FCC, thereby opening DBS providers to even more interference from MVDDS providers. MDSO's waiver demand should be viewed in a holistic manner with all the other sources of interference affecting DBS providers and subscribers.

As a general matter, further reduction in DBS service availability caused by heightened interference or any need to modify the installation, size, or maintenance of consumer satellite dishes affects the commercial viability of satellite service. Cable companies already market against DBS providers on these issues, yet MDSO seeks regulatory relief that would limit the ability of DBS providers to continue to improve and expand competitive video service offerings. The broader video competition landscape should remain a primary focus of the Commission's consideration of this petition.

***MDSO's Limited Test Cannot Support the Requested Relief.***

Putting to side the broader policy and competitive issues, the evidentiary record before the Commission is inadequate. MDSO bases its requested nationwide relief on a single study it commissioned in a non-representative market, Albuquerque. Such a study cannot support the broad universal relief sought by MDSO. MDSO claims that the Albuquerque DMA presents the "worst-case scenario" testing site and thus the best testing conditions from which to extrapolate the effects of MVDDS service "at power levels equal to – and often higher than – those proposed in the Petition."<sup>3</sup> A single study in a dry area of the country is a poor choice to evaluate interference effects on a rain-sensitive DBS service. Despite MDSO claims that the lack of rain in Albuquerque is a virtue, it is not. MDSO claims that "[b]ecause rain attenuates DBS and MVDDS signals, the climate of the Albuquerque area eliminated a factor that might have mitigated higher-power operations or otherwise influenced the test results."<sup>4</sup> Alleged non-interference of a non-attenuated MVDDS signal on DBS signal does not correlate to non-interference under rain fade. Even if rain attenuates the MVDDS signal, it does not follow that the attenuated signal would not interfere with a DBS signal compromised by rain fade. DIRECTV has also raised substantial concerns with the placement of the location of the test sites.<sup>5</sup> It remains unclear why MDSO has refused to expand the scope of its testing to include more representative markets among the many licenses it holds across the country, particularly given that MDSO's own engineers concede that "each system can have a different detection threshold."<sup>6</sup> MDSO also needs to address squarely the number of technical infirmities and test design flaws noted by DIRECTV.

***MDSO Should Seek a Build-Out Extension not Power Level Rule Changes.***

The timing of this petition also warrants highlighting and review. MDSO has focused on repeated unsuccessful administrative proceedings to alter fundamentally the nature and

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<sup>3</sup> Reply Comments of MDS Operations, Inc, WT. Docket No. 07-255, 2(Jan. 18, 2008) ("*MDSO Reply*").

<sup>4</sup> *MDSO Reply* at 8 (emphasis added).

<sup>5</sup> Letter from William Wiltshire to Marlene Dortch, WT Docket No. 07-255, 4 (Apr. 28, 2008).

<sup>6</sup> *MDSO Petition, Exh 1* at 35.

interference profile of MVDDS service. Now they use their own imminent build-out deadline to justify substantial changes to the Commission's rules.<sup>7</sup> MDSO argues that "[t]he passage of time without any deployment of these networks confirms that the underlying purpose of the MVDSS rules – provision of competitive services on an interference-free basis – would indeed be undermined if the rule were not waived under these circumstances." *Id.* at 4-5. Yet MDSO offers no evidence of empirical barriers to MVDDS system construction based on the Commission's existing rules, nor that MVDDS systems cannot be successfully designed without a 400 times increase in power levels. MDSO's decision to delay their build-out or divert resources to international opportunities should not be used as justification for dramatic rule changes that could affect adversely all the other authorized users of this band. If MDSO cannot meet its build out obligations of July 2009,<sup>8</sup> it should request to modify its build-out requirement, not to alter significantly the power levels of MVDDS service.

Respectfully submitted,

/s/ Linda Kinney

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cc: Fred Campbell  
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<sup>7</sup> *Id.* at 4 ("build-out deadlines for those licenses come due in July 2009").

<sup>8</sup> *MDSO Reply* at 10 ("A higher power design would enable MDSO to deploy in urban and rural markets quicker and more cost-effectively.").